

FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance may be provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I." Letters are summarized by subject matter and month issued.

Campaign

C. April Boling
Friends to Re-elect Richman
Dated: July 8, 2005
File Number A-05-110

A candidate's treasurer is advised that a closed committee may reopen to raise funds to pay debt that was unknown to the committee at the time it was closed.

Bianca Pirayou
Pirayou Law Offices
Dated: July 8, 2005
File Number A-05-125

A candidate's post-election funds that were inadvertently held too long and became surplus may not be transferred to the candidate's committee for future state elective office.

Colleen C. McAndrews
Bell, McAndrews & Hiltachk
Dated: June 17, 2005
File Number A-04-223

A treasurer is advised that certain contributions received after an election that turned out to be in excess of the committee's final net debt later did not need to be returned pursuant to the "excess contributions" rule, and instead could be returned to contributors as authorized by section 85319.

William R. Turner
Turner, Laub & Escovar, CPA
Dated: June 8, 2005
File Number A-05-020

A campaign committee may employ a third party provider to receive contributions through a website, and transmit those contributions to the committee semi-monthly.

Chuck Robinson
City of Walnut
Dated: June 2, 2005
File Number I-05-097

This letter provides general information about limitations on contributions and independent expenditures at the local level, and the ability of local jurisdictions to regulate such activities. The letter also provides general guidance about mass mailings that oppose candidates and whether these mailings would be considered an independent expenditure in all cases.

Pamela Lawton Wilson
Sullivan Wertz McDade & Wallace
Dated: June 20, 2005
File Number A-05-101

Costs and proceeds directly associated with the political fundraising portion of a golf tournament, including certain costs associated with produc-

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ing and mailing the invitations to an event, will be considered sponsored committee receipts and expenditures.

Norman Sato
City of San Jose
Dated: June 13, 2005
File Number I-05-105

Regulation 18423 defines "contribution" to include employee services donated by an employer, if the employee spends 10 percent or more of his or her compensated time in a calendar month rendering services for political purposes. The regulation includes an exception for personal services provided pursuant to a uniform policy allowing employees to engage in political activity. The letter advises that, generally, a "uniform policy" means that all employees are allowed to spend some amount of their compensable time on political activities of their own choosing.

Lorrie L. Brewer
City of Santa Cruz
Dated: June 7, 2005
File Number A-05-109

In connection with an August 30, 2005, ballot measure election, committees may use a filing schedule that combines the semi-annual campaign statement with the first pre-election statement due on July 21, 2005.

Carla Gordon
County of Yuba
Dated: June 7, 2005
File Number A-05-111

In connection with an August 30, 2005, election, candidates and committees may use a filing schedule that combines the semi-annual campaign statement with the first pre-election statement due on July 21, 2005.

Suzanne Jackson
County of Santa Barbara
Dated: June 17, 2005
File Number A-05-116

This letter combines the July semi-annual and first pre-election campaign statements in connection with a September 13, 2005, election.

David Bauer
McClintock for Senate and McClintock for Lt. Governor
Dated: May 31, 2005
File Number A-04-267

An elected official is advised on transfer rules among a candidate's current and future office accounts. The ban on post-election fundraising prohibits transferring leftover funds in an unsuccessful campaign account to the candidate's current office account that does not have net debt.

Dianne McHugh
County of Contra Costa
Dated: May 2, 2005
File Number A-05-078

The filing officer was advised that there is a mechanism in section 84205 that permits the combining of statements when an overlapping reporting period occurs or the filing of the semi-annual statement would be an additional, unnecessary filing to the two pre-election statements.

Bruce Perelman
Los Angeles County Employees' Retirement Association
Dated: May 31, 2005
File Number A-05-083

This letter advises that the Act does not regulate the campaign activities of individuals running for the Board of Investments of Los Angeles County Employees' Retirement Association, and, therefore, the Act's contribution rules do not apply to these individuals. However, the payments are gifts subject to reporting, limitations, and conflict-of-interest provisions. The letter rescinds the Koppes advice letter No. A-94-121 in its entirety.

Irene Sundberg
City of Tracy
Dated: May 27, 2005
File Number A-05-087

A city council member sought advice regarding provisions of the Act regulating receipt of contributions and gifts. The council member wanted to know if payments made to her or solicited by her for a local non-profit agency

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would constitute reportable campaign contributions or gifts to her. The official was advised that under the facts she provided, the payments were not reportable contributions or gifts because they were received principally for a charitable purpose. Thus the payments fall under amendments in the 1997 definition of "contribution" for co-sponsored events. Also, the official was advised that there is required public disclosure of these payments once a threshold (\$5,000 aggregate amount per source) is met and exceeded.

Crystal Bertheau
County of Santa Cruz
Dated: May 6, 2005
File Number A-05-088

This letter authorizes a county to combine a second pre-election statement with the semi-annual statement due July 31, 2005, for a July 26, 2005, ballot measure election.

Bonnie Stone
City of San Diego
Dated: May 6, 2005
File Number A-05-090

This letter authorizes a city to combine a second pre-election statement with the semi-annual statement due July 31, 2005, for a July 26, 2005, special election.

Robin Bjerke
County of Placer
Dated: May 17, 2005
File Number A-05-093

In connection with an August 23, 2005, ballot measure election, committees may use a filing schedule that combines the semi-annual campaign statement with the first pre-election statement due on July 14, 2005.

Thomas A. Willis
Remcho, Johansen & Purcell
Dated: May 24, 2005
File Number A-05-098

This letter advises that interest accrued on pre-Proposition 34 funds may be transferred to a candidate's committee for future office without attribution in the same manner as the pre-34 funds.

Conflicts of Interest

Jeffrey G. Scott
Vallecitos Water District
Dated: July 7, 2005
File Number I-05-107

A member of the board of directors of a water district who is an employee of the city which is served by the district may participate in district decisions, provided there is no personal financial effect.

Jim Gates
Torrance Airport Commission
Dated: July 12, 2005
File Number A-05-112

An airport commissioner, who rents a city-owned hangar, is advised that he may not participate in decisions by the airport commission about changes to the standard agreement for renting city-owned hangars at the airport.

Iris P. Yang
City of Yuba
Dated: July 29, 2005
File Number I-05-113

Two city council members sought advice as to several issues: (1) Whether income received outside the official's jurisdiction would be considered for purposes of applying the "public generally exception" under regulation 18707.5; (2) Whether a council member would be required to disqualify himself from participating in a decision affecting a customer if the council member does not "have reason to know" that such a person is a customer of his; and (3) Whether a council member may participate in city council decisions involving a developer who makes a tax-deductible contribution to a foundation, which is a source of income to the council member's wife. They were advised that: (1) An official may consider only income received in the official's jurisdiction in applying regulation 18707.5; (2) If the requirements under regulation 18707.5(c) are met, the council member would not be required to disqualify himself from participating in a decision affecting a customer if he does not "have reason to know" that such a

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person is a customer of his; and (3) The council member may not participate in city council decisions involving a developer who has made a tax-deductible contribution to the Foundation if the contribution will result in a material financial effect on his sources of income or his personal finances and those of his immediate family.

Heather C. McLaughlin
City of Benicia
Dated: July 27, 2005
File Number A-05-124

Two members of a city council are advised regarding the Act's segmentation process for decisions where they each would otherwise have a potential conflict of interest. The governmental decision involved a joint use agreement between the city and the local school district to maintain certain school property as some of the properties are located within 500 feet of property owned by each of the public officials. Under the segmentation process, the properties for which conflicts exist are to be segmented into separate decisions.

Guadalupe Alvarez
City of Guadalupe
Dated: July 28, 2005
File Number I-05-134

A mayor sought advice as to whether a conflict of interest would exist if he participated in decisions involving proposed safety changes to a highway when he owned property located within 500 feet of the project. It is presumed that the material effect of the governmental decision on his property is material. Therefore, unless rebutted, he is presumed to have a conflict of interest and may not participate in this decision.

Marguerite P. Battersby
City of Highlands
Dated: July 28, 2005
File Number A-05-137

A city council member may not participate in a governmental decision to provide funds to a Senior Center of which she is the Executive Director and a management employee. In

addition, the council member may also be prohibited from participating in decisions concerning providing funds to other nonprofits, unless those decisions will not have a reasonably foreseeable material financial effect on the Senior Center. Donors to the Senior Center are not economic interests of the council member and need not be reported on the council member's statement of economic interests.

Peter N. Brown
City of Carpinteria
Dated: June 6, 2005
File Number I-05-017

This letter advises a city attorney on the general application of conflict-of-interest provisions to a council member who also is executive director of a local taxpayers association and a business association. The letter concludes that other members and directors of those associations are not sources of income to the council member.

Heather C. McLaughlin
City of Benicia
Dated: June 15, 2005
File Number A-05-041

Three members of a city council are advised that they each have a potential conflict of interest in participating in a governmental decision regarding the city's consideration of the downtown mixed use district. The officials each own property that is located within 500 feet of property that is the subject of the governmental decision.

Karl H. Berger
City of Santa Paula
Dated: June 30, 2005
File Number A-05-054

City council members and planning commissioners are advised as to potential conflicts of interest in participating in governmental decisions regarding a general plan amendment required for the approval of a large housing development project that would increase the city's population by approximately 30%. Additional advice is provided regarding the application of the "public generally" exception and specifically the determination of the "substantially the same

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manner” test under regulation 18707.1 as to public officials residing within 500 feet of the project boundaries. One council member, who owns a residence on a parcel of 19.27 acres, does not qualify for the exception because his property interest will not be affected in “substantially the same manner” as property owners in the city. Another disqualified council member, who owns a single family residence on an average size lot, may be able to participate in the project decisions if a “significant segment” can be identified that is impacted in “substantially the same manner” as the official. The letter also discusses factors that may rebut the presumption of non-materiality when special circumstances exist as a result of increased traffic and noise.

Heather C. McLaughlin
City of Benicia
Dated: June 15, 2005
File Number A-05-061

Two members of a city council are advised that they each have a potential conflict of interest in participating in a governmental decision regarding a joint use agreement between the city and the local school district to maintain certain school property. The property is located within 500 feet of property owned by each of the public officials.

Doug Buchanan
Mountain-Valley Emergency Medical Services
Dated: June 15, 2005
File Number I-05-064

A multi-county agency was provided informal assistance regarding the employment of a designated employee who will also hold a position with a company with which the agency has a contractual relationship. While there is nothing in the Act that prohibits a public official from holding two public positions concurrently, other laws outside the Act may restrict the ability of a public official to hold two public offices simultaneously, if those offices are determined to be “incompatible” offices. How-

ever, the conflict-of-interest analysis should be applied to any governmental decisions made by the designated employee.

Helen Holmes Peak
City of San Marcos
Dated: June 28, 2005
File Number I-05-065

A local city attorney is advised that a member of the city council may vote on his/her appointment to a joint powers authority as long as the position is uncompensated, including positions where the member subject to the appointment waives any stipend provided with the position. The appointed member may not, however, participate in any decisions regarding reimbursement for expenses incurred in the position.

Craig A. Steele
Richards, Watson, Gershon
Dated: June 13, 2005
File Number A-05-071

Assuming conflicts of interest in three of five council members, one council member may participate in litigation decisions by the city council under the Act’s “legally required participation” rules (section 87101 and regulation 18708). If the defendants may assert the lawyer-client or similar legal privilege to bar participation in these decisions by the council member who is suing her colleagues on the city council, the “legally required participation” rule will not be construed to compel the defendants to waive their right to assert the privilege.

Richard D. Pio Roda
City of Milpitas
Dated: June 8, 2005
File Number A-05-091

The Act’s conflict-of-interest rules do not prohibit a mayor, who possesses but does not use his real estate license, from participating in a decision regulating real estate signs. The Act’s conflict-of-interest rules also do not prohibit a council member from participating in a decision regulating real estate in the value of her real estate business or its fiscal year gross revenues; or an effect of 5,000 or more in a fiscal year upon the expenses of the council member’s real estate business.

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**Gene Murabito,
Glendora Planning Commission**

Dated: June 29, 2005

File Number A-05-108

A planning commissioner asks whether he can vote on commercial/retail developments where tenants and owners might join a Chamber of Commerce. A public official who owns a company that receives \$400 per month from the chamber may participate in the decisions. It does not appear the chamber or his business will be materially affected.

**Patrick C. Wilson
City of Santa Rosa
Dated: May 27, 2005
File Number I-05-040**

A local planning commissioner is advised that he would have a conflict of interest in participating in decisions involving customers of a bank where he is employed as a vice-president and major loan officer and receives bonuses based on the bank's performance if his bonuses are affected by \$250 or more in a 12-month period.

**Laura C. Kuhn
City of Scotts Valley
Dated: May 12, 2005
File Number A-05-069**

The Act's conflict-of-interest rules are presumed to not prohibit a city's redevelopment director, whose home is over 500 feet away from the proposed relocation of a propane facility, from participating in decisions regarding the relocation, based upon the opinion of experts solicited by the director that such relocation would not affect the value of her home.

**Christi Hogin
City of Malibu
Dated: May 23, 2005
File Number A-05-070**

A city attorney sought advice as to whether a conflict of interest would exist if a city council member participated in the city council's consideration of two development agreements: The first, between the city and a nonprofit, and the second, between the city and a business entity,

both of which are owned and controlled by official's source of income, a nonprofit. The city attorney was advised that: (1) the council member may not participate in decisions regarding the development agreement between the nonprofit and the city, if it is reasonably foreseeable that such decisions would have any financial effect at all on the nonprofit; and (2) it is presumed that the financial effect of the governmental decision on the business entity is material. Therefore, unless this presumption is rebutted, the council member is disqualified from participating in this decision.

**Dianne Fritz
County of Mariposa
Dated: May 2, 2005
File Number I-05-072**

A member of a county Board of Supervisors and a local business owner, sought advice regarding the Act's conflict-of-interest provisions with respect to participating in decisions regarding the county's sign ordinance. The official was advised that a conflict of interest exist only if it is reasonably foreseeable that her economic interests will be materially affected by the decision. The public official must make a good faith effort to assess the effect of the decision by using some reasonable and objective method of valuation.

**Velina Consuelo Underwood
City of Gualala
Dated: May 23, 2005
File Number A-05-077**

The Act's conflict-of-interest rules do not prohibit a member of an advisory board, which makes recommendations to the County Planning Department regarding requests for development or use permits, from participating in a decision concerning a permit request by an individual against whom the advisory board member, as a private attorney, represented a former client. This is because the earlier litigation has concluded, the board member has been completely paid for her legal services, and no longer represents her client (or anyone else) against the individual seeking a favorable permit recommendation.

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Huston T. Carlyle, Jr.
City of San Bernardino
Dated: May 19, 2005
File Number A-05-081

A council member is disqualified under the Act's conflict-of-interest provisions from taking any part in city council decisions regarding the purchase of, or eminent domain proceedings against, real property owned by the council member's aunt, who employs the council member in her wholly-owned business. The letter concludes that it is foreseeable that these decisions would have a material financial effect on the council member's source of income.

Valentin J. Lopez
California Highway Patrol
Dated: May 19, 2005
File Number I-05-082

An employee of a state agency asked if the on-line business he was creating would pose a conflict of interest with regard to his position with the state agency. The requestor was advised that the Act does not bar public officials from maintaining outside employment during their tenure as public officials. However, a conflict of interest under the Act can arise within the context of specific governmental decisions that have reasonably foreseeable material financial effects on one or more of an official's economic interests, including his or her business interests and sources of income to that business. The official was also strongly advised to consult his agency's statement of incompatible activities for guidelines when considering receiving outside income concurrent with his position with the state agency.

John A. Ricker
County of Santa Cruz
Dated: May 3, 2005
File Number A-05-084

A county employee may participate in decisions involving the formation of the community's facilities district, so long as those decisions will have no financial effect on his real property which is outside, but adjacent to the proposed district.

Teng-cheng Wu
Mountain View Sanitary District
Dated: May 27, 2005
File Number A-05-092

A public official asked whether he could travel to China to provide paid consulting services to the World Bank. He was advised that although the Act does not bar public officials from maintaining outside employment during their tenure as public officials, a conflict of interest under the Act can arise within the context of specific governmental decisions that have reasonably foreseeable material financial effects on one or more of an official's economic interests, including a source of income.

Quinn M. Barrow
City of South El Monte
Dated: May 31, 2005
File Number A-05-102

A city council member is advised that he may not participate in a decision by the city council about whether to award grant funding to the non-profit organization that employs him.

Conflict of Interest Code

Sandra K. Duveneck
**California Department of Corrections
& Rehabilitation**
Dated: July 18, 2005
File Number A-05-133

In the case of a newly-created agency (California Department of Corrections & Rehabilitation—CDCR) consolidating the functions of one or more abolished agencies, non-board member public officials of an old agency (Youth and Adult Corrections Agency), whose job functions have not materially changed, may continue filing annual statements of economic interests under the old conflict-of-interest code when the legislation creating the new agency states that all regulations adopted by predecessor entities are expressly continued in force. However, members of the new boards within CDCR are required to file new, full-disclosure state-

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ments under section 87302.6. The CDCR has 90 days to submit a new conflict-of-interest code to the Commission for approval or revisions.

Cannon Michael
San Luis Resource Conservation District
Dated: July 12, 2005
File Number A-05-068

The Act states that the Commission is the code reviewing body for multi-county local government agencies. The determination as to whether an exemption from having to file a conflict-of-interest code which was previously granted to a multi-county local agency is still valid is subject to the provisions of regulation 18750.1. Therefore, that determination is to be made by the Executive Director.

Gary W. Sawyers
Western Valley Land Conservancy
Dated: July 18, 2005
File Number A-05-123

A public benefit corporation, organized as a land conservancy, and which substantially meets the four criteria set forth in the commission's *Siegel* Opinion letter (3 FPPC Ops. 62) and its progeny is considered a government agency subject to the strictures of the Act.

Becky Bailey-Findley
Orange County Fair & Exposition Center
Dated: May 12, 2005
File Number A-05-066

The 32nd District Agricultural Association was advised that its board members and senior staff meet the definition of public officials who manage public investments and are subject to the disclosure provisions of section 87200.

Gift Limits

Larry A. Alamao
Department of Real Estate
Dated: July 8, 2005
File Number I-05-117

A department head is advised regarding the gift

limit and reporting provisions of the Act in relation to the acceptance and valuation of transportation on private aircraft. The value of the gift is its fair market value at the time received.

Wen Ling Chin
San Francisco Retirement System
Dated: June 3, 2005
File Number I-05-086

A security analyst for a local government agency is advised that she did not receive a reportable gift of lodging when she attended an investor conference, as she fully reimbursed the provider of the lodging within 30 days of attending the conference.

Richard D. King
Foothill Corporate Center
Dated: June 3, 2005
File Number I-05-095

This letter provides guidance to a city planning commissioner on determining whether reimbursements for travel are gifts or income.

Michael H. Krausnick
Stanislaus County
Dated: May 12, 2005
File Number A-05-085

A county counsel sought advice as to whether a computer won in a random drawing by a public official was disclosable as a gift or as income on the Form 700. The official was advised that as long as the raffle was open to all persons attending the event, and the event was open to the public, the raffle was a "bona fide competition." Thus, the raffle prize must be reported as income at its fair market value on the official's next annual statement of economic interests.

Honoraria

Karen Gorman
Metropolitan Transportation Authority
Dated: July 8, 2005
File Number A-05-139

A flat fee paid to a designated employee for providing consumer input for a study conducted by a marketing research firm is not a prohibited honorarium within the meaning of the Act.

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Lobbying

John Keplinger
The Secretary of State
Dated: May 16, 2005
File Number A-05-001

The office of the Secretary of State is advised that it must publish the lobbyist directory in at least one other form aside from the online directory.

Mass Mailing

Maggie Johnston
Marin County Employees' Retirement Association
Dated: June 13, 2005
File Number A-05-028

The Act's restrictions upon mass mailings at public expense apply to a county employee retirement association from using public money to produce and/or distribute a tangible version of its quarterly newsletter. However, the scope of the Act's restrictions is limited. The association, for example, may publish tangible information about "non-elected" association board members, or information about any board members on the association's website.

Revolving Door

Skip Jones
Milk Processing Board
Dated: July 12, 2005
File Number A-05-062

A former employee of the Milk Processing Board/Dept. of Food and Agriculture (MPB/DFA) is advised that he may not engage in activities for the purpose of influencing administrative or legislative action of his former state agency for one year after leaving his state position. However, he may consult with milk handlers and appear before MPB/DFA staff regarding the specific audit of his clients' monthly filings, so long as they are not proceedings in

which he participated as a state administrative official. The requestor is further advised that he may appear at public meetings and request public records on behalf of his clients. He may attend general informational meetings, seminars, or similar events and communicate with the press.

Jonna A. Ward
Visionary Integration Professionals, Inc.
Dated: July 8, 2005
File Number A-05-096

The current employer of a former state administrative official sought advice regarding revolving door provisions of the Act. The employer sought advice regarding whether the former official could participate or assist in a newly issued request for proposal ("RFP") issued by the state, which the employer viewed as a "new proceeding." The former official had participated in the "draft" request for proposal as a consultant for the state. The lifetime ban on "switching sides" in sections 87401 and 87402 prohibits the former official from representing or assisting her current employer because the two RFPs involve the same party, the same subject matter, as well as similar factual issues. The current RFP is not a new proceeding for purposes of the post-governmental restrictions of the Act.

Margaret Griffin
California Department of Aging
Dated: July 14, 2005
File Number A-05-114

A retiring state employee is provided with informal assistance concerning the restrictions placed on her by the Political Reform Act as she contemplates an opportunity to work as a consultant after her retirement for an organization of service providers whose services she monitored as a state employee.

Anne Mayer
Riverside County Transportation Commission
Dated: July 21, 2005
File Number I-05-115

A former district director for a state agency is advised concerning the Act's post-governmental

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employment restrictions as they relate to her attendance and participation at meetings with Caltrans employees in performing the functions of her current job with a local transportation agency.

Norman Suydam
LAN Engineering Corporation
Dated: June 17, 2005
File Number A-05-103

A former state official sought advice regarding revolving door provisions of the Act. Specifically, the official wished to know whether he would be barred from working a management contract awarded by his former agency. Assuming the permanent ban does not apply, he may perform work involving the management contract, which was an existing contract awarded when the official was still in state service. However, the official may not, as a paid employee of a private engineering consulting firm, appear before or communicate with his former agency, if the appearance is made for the purpose of influencing any legislative or administrative action of the agency, or influencing any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale of purchase of goods or property.

Richard P. Doyle
LAN Engineering Corporation
Dated: June 6, 2005
File Number A-05-104

A former state official sought advice regarding revolving door provisions of the Act. Specifically, the official wished to know whether he would be barred under the lifetime ban from working on a project in which he had participated in planning as a former state worker. The supervisor's new employer was awarded the bid for the project prior to the hiring of the official and more than a year after the official left state service. The official would be involved in supervising development of the project. The official was advised that he may participate in work on the development phase of the project as it is considered a new proceeding.

Statements of Economic Interests

Elliott Robinson
Monterey County
Dated June 3, 2005
File Number A-05-062

A county asks if the local members of a workforce investment board are public officials under the Act. The advice provided stated that members of the workforce investment board, which will serve as a workforce investment board pursuant to the Workforce Investment Act, are public officials who must file statements of economic interests and are subject to the Act's conflict-of-interest rules.